

sity, must be physicians. In view of these provisions, therefore, you, as Commissioner, subject to approval by the Public Health Council, have the authority to fix the compensation of such physician director of a bureau but it must be within the limits of available appropriations.

Yours very truly,

THEODORE D. PARSONS,
Attorney General,

By: JOSEPH A. MURPHY,
Assistant Deputy Attorney General.

JAM:MB

APRIL 20, 1949.

SANFORD BATES, *Commissioner,*
Department of Institutions and Agencies,
State Office Building,
Trenton 7, New Jersey.

FORMAL OPINION—1949. No. 35.

MY DEAR COMMISSIONER BATES:

This acknowledges your inquiry of April 13th, requesting my advices as to the present validity and legal force and effect of an Opinion rendered by this office on November 27, 1922, in a matter pertaining to the discipline of guards and uniformed officers at the New Jersey State Prison and allied institutions.

It appears that the Attorney General at that time answered two questions in the affirmative and you desire to restate these questions at this time as follows:

1. Has the State Board of Control power to compel the suspension of an employee of the Prison when charges have been preferred against such employee and when the Principal Keeper refuses to take such action?

2. Has the Board of Managers of the State Prison power to compel the Principal Keeper to suspend a guard of the Prison or one of its allied institutions against which said employee charges have been filed either by the Board of Managers of the Prison or by the State Board of Control?

I am of the opinion, and I so advise you, that both questions are still answerable in the affirmative for the reasons so ably stated in the Opinion of the Honorable Thomas F. McCran, then Attorney General, which I shall briefly review, and for other reasons which I shall set forth.

Our former Supreme Court said: "The legislative policy (N. J. S. A. 30:4, et seq.) has been to give the State Board of Control of Institutions and Agencies a wide latitude in the matter of administration of the penal institutions * * *." (In re O'Connor, 130 N. J. L. 197.)

Specifically, in R. S. 30:1-12 the state board is empowered to "determine all matters of policy and shall have power to regulate the administration of the institutions * * * within its jurisdiction, correct and adjust the same so that each shall function as an integral part of a general system. The rules, regulations, orders and

directions issued by the state board or by the commissioner pursuant thereto, for this purpose shall be accepted and enforced by the board of managers having charge of any institution or group of institutions * * *."

Then, in R. S. 30:4-4, the Legislature said: "Subject to the supervision, control and ultimate authority of the state board, the management, direction and control of the several institutions * * * shall be vested in the several boards of managers who shall be responsible to the state board for their efficient, economical and scientific operation."

Further down in the chain of authority, in R. S. 30:4-5, "The chief executive officer of each institution or agency shall be its executive and administrative officer and *subject to the rules and regulations adopted by the board of managers* shall be responsible to the board for the proper conduct and management of the institution or agency, the physical condition of the property, the proper use of the plant and equipment, *the conduct of all employees* appointed by him and the *care and treatment of the inmates.*"

We see then that the chief executive officer, in this case the Principal Keeper of the Prison, is responsible to the board of managers and they in turn are responsible to the state board. Therefore, the Principal Keeper is required to carry out the rules, regulations and directions of his board and those of the state board given the local board.

The board of managers, with the approval of the state board, may discharge any employee in the unclassified civil service whose performance of duties is unsatisfactory (R. S. 30:4-130). Or the state board may act in the premises without the initiative or assent of the board of managers.

Further, the board of managers may determine the number, qualifications, powers and duties of the officers and employees in each institution (R. S. 30:4-3).

As a result of the foregoing, the Principal Keeper is required to carry out the rules, regulations and directives of his board and of the state board and if such directives contemplate the suspension or dismissal of an officer or employee of the institution, for cause, this must be done.

It only remains for the state board to direct the local board to accomplish the disciplinary action, or in the alternative, the local board may so direct the principal keeper.

The rule of the state board, which is alleged to have been violated, prohibits the striking of inmates, unless in self defense. The rule is sound and finds approval in Instructions to Grand Jury, 22 N. J. L. J. 376.

There is no merit to the contention that the Principal Keeper is not subject to the foregoing statutes because his appointment was placed in the hands of the Governor by Article 7, Section 2, Paragraph 2 of the N. J. Constitution of 1844, as amended in 1875.

The constitutional provision for appointment makes no mention of the Principal Keeper's powers or duties, and they are by necessary implication deemed to be left to the Legislature for determination. Our courts have so ruled in construing this very section of the former constitution. (*Board of Public Utility Commissioners vs. Lehigh Valley R. Co.*, 106 N. J. L. 411, citing *State vs. DeLorenzo*, 81 N. J. L. 613, re Sheriff; *O'Reardon vs. Wilson*, 4 N. J. Misc. R. 1008; affirmed 104 N. J. L. 181, re attorney general.)

There being no constitutional limitation upon the authority of the Legislature to fix and determine the duties and responsibilities of the Principal Keeper of the

Prison, it therefore follows that such authority resides in the legislative branch of government.

The Legislature, having enacted the above cited statute dealing with the subject matter, the Principal Keeper is required to carry into effect the purpose and intent thereof. At the moment this requires the Principal Keeper, on orders of his board, to discipline three employees who have, in the judgment of the board, violated a rule of the State Board of Control which is also a rule adopted by the local board.

Accordingly, the board of managers should notify the Principal Keeper of the type of discipline these men should receive as indicated by the particular circumstances of each case.

Very truly yours,

THEODORE D. PARSONS,
Attorney General,

By: EUGENE T. URBANIAK,
Deputy Attorney General.

APRIL 21, 1949.

HON. JOHN J. DICKERSON, *State Treasurer,*
Att: MR. JOHN S. WOOD, 3D,
State House, Trenton, N. J.

FORMAL OPINION—1949. No. 36.

DEAR SIR:

Your letter of April 13, 1949, requesting opinion, has been received.

The facts as related to this office indicate that Edward E. Pickard, Supervising Principal of Schools of Cape May City, Member No. 3112, was in the armed forces from April, 1943, to April, 1947. During that period, his employer, the Board of Education of Cape May City, paid from current funds, contributions which were credited to Mr. Pickard's account in the county savings fund of your retirement system.

On April 4, 1947, Mr. Pickard received an honorable discharge and was awarded service-connected disability pension on account of injuries. From the date of said discharge, no further contributions were paid by his employers. We understand further that Mr. Pickard recently applied for disability retirement (we assume under the provisions of R. S. 18:13-57) and on March 12, 1949, the necessary medical certificate issued.

You propound the following questions:

1. Whether you should request and demand that the Cape May City Board of Education, from its current budget, pay contributions for the term from April 4, 1947, to March 12, 1949.

2. Whether you should allow Mr. Pickard credit for service up to the date of disability retirement, March 12, 1949, or whether his service credit as a member of the fund ceased on the date that he last had a contribution credited to his account—the month of March, 1947.